

From: Newport, Robert
Sent: Monday, August 5, 2013 5:34 PM
To: Bertolacini, Jim K - DNR
Cc: Rortvedt, Eric - DNR; Kirsch, Kevin J - DNR; Bell, Brian
Subject: RE: Reworked TMDL language

Hi Jim

Sorry to be so late sending you a written reply. I think we were generally comfortable after our telephone discussions, and then neglected to closely read the language and send a written response.

My comments are attached. It is possible Brian may have an idea or two to add. To me, the two main points are: (1) What if there is an existing TMDL that does not express what are the % reductions needed to meet the WLA (e.g., I am not sure the lower Fox identifies the % reductions needed); and (2) Should make it a little more clear what the baseline is from which the percent reduction is needed. We suggested some language to this effect.

We also wanted to briefly touch base with you on the WQS language for the permit. Here is what you have right now:

1.3.1 This permit specifies the conditions under which storm water may be discharged to waters of the state for the purpose of achieving water quality standards contained in chs. NR 102 through 105, NR 140, and NR 207 Wis. Adm. Code. For the term of this permit, compliance with water quality standards will be addressed by adherence to general narrative-type storm water discharge limitations and implementation of storm water management programs and practices.

1.3.2 This permit does not authorize water discharges that the Department, prior to authorization of coverage under this permit, determines will cause or have reasonable potential to cause or contribute to an excursion above any applicable water quality standards. Where such determinations have been made prior to authorization, the Department may notify the municipality that an individual permit application is necessary. However, the Department may authorize coverage under this permit where the storm water management programs required under this permit will include appropriate controls and implementation procedures designed to bring the storm water discharge into compliance with water quality standards.

Could you live with something more like this?

1.3.1 This permit specifies the conditions under which storm water may be discharged to waters of the state for the purpose of achieving water quality standards contained in chs. NR 102 through 105, NR 140, and NR 207 Wis. Adm. Code. For the term of this permit, efforts to protect water quality will be addressed by adherence to the narrative-type storm water discharge limitations and implementation of storm water management programs and practices in this permit.

This permit does not authorize water discharges that the Department, ~~prior to authorization of coverage under this permit~~, determines will cause or have reasonable potential to cause or contribute to an excursion above any applicable water quality standards. Where such determinations have been made ~~prior to authorization~~, the Department may notify the municipality that an individual permit application is necessary. However, the Department may authorize coverage under this permit where the storm water management programs required under this permit will include appropriate controls and implementation procedures designed to bring the storm water discharge into compliance with water quality standards.

We have been working with EPA HQ on the WQS language for MS4 permits. We are always trying to balance the MEP idea with the obligation to meet WQS. There is a slight fear that the language as currently drafted would restrain WDNR from taking a permit or compliance action if it is found through monitoring or a citizen report that there is a serious problem with the discharge that is causing a substantial violation of WQS.

Thanks for all your work on this permit. And again, sorry to be so late sending you a written reply.

Best regards,

Bob Newport
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From: Bertolacini, Jim K - DNR [mailto:Jim.Bertolacini@wisconsin.gov]
Sent: Wednesday, June 26, 2013 3:08 PM
To: Bell, Brian; Newport, Robert
Cc: Rortvedt, Eric - DNR; Kirsch, Kevin J - DNR
Subject: Reworked TMDL language

Brian and Bob –

As Eric Rortvedt and I discussed with both of you on June 20th, we want to rework the TMDL language in the draft MS4 permits to better align with how we would like to proceed with TMDL implementation. Eric, Kevin Kirsch, and I met today to develop the proposed new language. There are two documents attached. Excerpt1 has the proposed changes using the tracking feature of MSWord and excerpt2 is the language with the changes accepted. Both documents have the areas that have changed highlighted in yellow. Please review and let us know you thoughts. We can have another call to discuss if needed, although I'll be out next week and unavailable. Thanks as always. Jim



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Attachments

- draft wis ms4 gp excerpt - EPA comments.docx (16.66KB)

1.5 Impaired Water Bodies and Total Maximum Daily Load Requirements

1.5.1 By March 31, 2014 and by March 31 biennially thereafter, the permittee shall determine whether any part of its MS4 discharges to an impaired water body listed in accordance with section 303(d)(1) of the federal Clean Water Act, 33 USC §1313(d)(1)(C), and the implementing regulation of the US Environmental Protection Agency, 40 CFR §130.7(c)(1).

Note: A list of Wisconsin impaired water bodies may be found on the Department's Internet site at: <http://dnr.wi.gov/topic/impairedwaters/>

1.5.2 If the permittee's MS4 discharges to an impaired water body, the permittee shall include a written section in its storm water management program that discusses the management practices and control measures it will implement as part of its program to reduce, with the goal of eliminating, the discharge of pollutant(s) of concern that contribute to the impairment of the water body. This section of the permittee's program shall specifically identify control measures and practices that will collectively be used to try to eliminate the MS4's discharge of pollutant(s) of concern that contribute to the impairment of the water body and explain why these control measures and practices were chosen as opposed to other alternatives.

1.5.3 After the effective date of this permit, the permittee may not establish a new MS4 discharge of a pollutant of concern to an impaired water body or increase the discharge of a pollutant of concern to an impaired water body unless the new or increased discharge causes the receiving water to meet applicable water quality standards, or the Department and the USEPA have approved a total maximum daily load (TMDL) for the impaired water body. If there is an approved TMDL for the receiving water, the permittee shall comply with Section 1.5.4 below. "New MS4 discharge of a pollutant" has the meaning specified under section 1.4.2.1 of this permit.

Note: Approved TMDLs are listed on the Department's Internet site at: <http://dnr.wi.gov/topic/impairedwaters/>

1.5.4 If prior to the effective date of this permit the Department and the USEPA have approved a TMDL to which the permittee's MS4 discharges a pollutant of concern and the TMDL assigns the permittee a wasteload allocation, then the permittee shall comply with sections 1.5.4.1, 1.5.4.2, and 1.5.4.3 below as appropriate.

Note: Approved TMDLs are listed on the Department's Internet site at: <http://dnr.wi.gov/topic/impairedwaters/>. As of the effective date of this permit, approved TMDLs that affect the applicability of section 1.5.4 are the Rock River in south central Wisconsin, Tainter/Menomoin Lakes in west central Wisconsin, and the Lower Fox River in northeast Wisconsin.

1.5.4.1 With the annual report due March 31, 2014, the permittee shall submit all of the following:

1.5.4.1.1 An updated storm sewer system map that identifies:

1.5.4.1.1.1 The current municipal boundary. For a permittee that is not a city or village, identify the permitted area.

Note: The permitted area for towns, counties and non-traditional MS4s pertains to the area within an urbanized area or the area served by its storm sewer system, such as a university campus.

1.5.4.1.1.2 The TMDL reachshed boundaries within the municipal boundary, and the area of each TMDL reachshed in acres within the municipal boundary.

Commented [GU1]: Do we actually need this if we have 1.5.4.1.1.3?

1.5.4.1.1.3 The MS4 drainage boundary associated with each TMDL reachshed, and the area in acres of the MS4 drainage boundary associated with each TMDL reachshed.

1.5.4.1.2 Identification of areas on a map and the acreage of those areas within the municipal boundary that the permittee believes should be excluded from its analysis to show compliance with the TMDL wasteload allocation. In addition, the permittee shall provide an explanation of why these areas should not be its responsibility.

Note: An example of an area within a municipal boundary that may not be subject to a TMDL wasteload allocation for the permittee is an area that does not drain through the permittee's MS4. This information acquired with the annual report due March 31, 2014, will be used by the Department to facilitate implementation of the TMDL.

1.5.4.2 With the annual report due March 31, 2017, the permittee shall submit a tabular summary that includes the following for each MS4 drainage boundary associated with each TMDL reachshed as identified under section 1.5.4.1.1.3 and for each pollutant of concern:

1.5.4.2.1 The permittee's percent reduction needed to comply with its TMDL wasteload allocation as provided in the Department and the USEPA approved TMDL.

1.5.4.2.2 The modeled MS4 annual average pollutant load without any storm water control measures.

Note: This is comparable to the no-controls condition modeled for the developed urban area performance standard of s. NR 151.13, Wis. Adm. Code.

1.5.4.2.3 The modeled MS4 annual average pollutant load with existing storm water control measures.

1.5.4.2.4 The percent reduction in pollutant load achieved calculated from the no-controls condition determined under section 1.5.4.2.2 and the existing controls condition determined under section 1.5.4.2.3.

1.5.4.2.5 The existing storm water control measures including the type of measure, area treated in acres, the pollutant load reduction efficiency,

Commented [GU2]: I am not sure we have percent reductions in the currently approved TMDLs (e.g. lower Fox). Also, need to make clear here what is the baseline. Suggest instead something like, "The percent reduction in pollutant loadings, from the baseline of annual average pollutant loadings without stormwater control measures, needed to comply with its TMDL wasteload allocation."

Commented [GU3]: Suggest deleting the word "any." There are features in the system, such as sumps in catch basins, that function to a degree as a stormwater control measure.

and confirmation of the permittee's authority for long-term maintenance of each practice.

1.5.4.3 If the summary required under section 1.5.4.2 shows that the permittee is not achieving the applicable percent reductions needed to comply with its TMDL wasteload allocation for each TMDL reachshed, then with the annual report due March 31, 2017, the permittee shall submit a written plan to the Department that describes how the permittee will make progress toward achieving compliance with the WLA. The plan shall include the following information:

1.5.4.3.1 Recommendations and options for storm water control measures that will be considered to reduce the discharge of each pollutant of concern.

1.5.4.3.2 A proposed schedule for implementation of the recommendations and options identified under section 1.5.4.3.1.

Note: The proposed schedule may extend beyond the expiration date of this permit.

1.5.4.3.3 A cost effectiveness analysis for implementation of the recommendations and options identified under section 1.5.4.3.1.

Note: The Department intends to develop guidance and make it available on the Department's Internet site to assist a permittee with developing a plan under this section. The plan may incorporate green infrastructure or low impact development practices. For some pollutants of concern, water quality trading may be an option considered by a permittee as part of its plan. For phosphorus reduction, a permittee may consider entering into an adaptive management agreement with a traditional point source discharger as described in s. NR 217.18, Wis. Adm. Code.